

REASONS *against* the BILL for Erecting COURTS of CONSCIENCE.

1. **A**S to the matter of the Act, it takes away (as to the causes mentioned in the Act) the ancient Trials by Jury, and gives an Arbitrary Power to the Commissioners to hear and determine finally, without any Appeal from them to any Judicature whatever: And great Inconveniences must ensue, by giving an absolute Power to the Commissioners to dispose of all Debts under 40 s. at their sole Wills and Pleasures, and takes from every Man his Birth-right, to the Ancient Law of the Land.

2. Parliaments have been ever very careful to maintain the Antient Law in its Fundamentals (of which, Trials by Jury is a chief one) and therefore it was once the Answer of a Parliament upon almost the like occasion, *Nolumus mutare leges Angliae.*

3. Causes under 40 s. are properly Triable in Inferior Courts, as Courts Barons, &c. This Act destroys all those Courts, and takes the Power out of Persons of Quality, that are Lords of Mannors, and Vests it in Shop-keepers.

Now as to the Design of the Act, to hinder the Expending of great Costs and Charges at Law for small Debts, (1.) As to that, the Law has provided already inferior Courts, where the Charges are but small, and the Recovery quick and easie; And if the Defendant (upon the first Summons or Notice of a Suit against him) tenders to the Plaintiff what is justly due to him; If the Plaintiff refuseth to Accept of it, but will (notwithstanding such tender) wilfully proceed, it shall be at the Plaintiffs own Cost and Charges by the course and practice of the said Courts; And in Case poor Persons do either Sue, or be Sued there, they are admitted *in forma Pauperis*, and pay no Fees at all.

Equal difficulty in a Cause of 40 s. as 40 l. yet left to the decision of unlearned Men. There is not the same Danger of Partiality in Juries, as in Commissioners, for against Juries the Parties have their Challenge.

How far forth special Agreements bind, and upon what Considerations Promises for the payment of Money are obliging, is a very nice point of the Law. Therefore,

From hence it must follow, That many Errors must of Necessity be in the Decrees of this Judicature, and yet from such Decrees there is no Appeal.

It seems to be no good Answer to say, That the Decrees of this Judicature, are but for small Debts, in as much as Justice is equally abused and transgressed in great as small things, though the Losses sustained vary.

This Judicature is impowered to examine and determine upon the Oaths of the Parties themselves, as well as Witnesses, (not allowable by our Laws) which will cause frequent Perjuries amongst poor People, who will be enticed to forswear themselves, not only to enrich their Pockets, but also to gratify their Revenge and Anger.

To prevent the many Perjuries, Partialities, Corruptions of Commissioners, and other Inconveniences which must unavoidably fall out, if the Bill for the Courts of Conscience do pass into an Act; It is Humbly offered as an Expedient, That an Act of Parliament may be made to Authorize and Enjoyn all Stewards and Judges of Inferior Courts of Record, (Who are Men of Judgment and Understanding, and have Knowledge of the Laws of the Land,) that they do at every Court to be held, take an exact Account from the Keepers of the Prisons belonging to their Respective Courts, of what Prisoners are brought into the same, and of what Causes of Action they are charged with. And as to all such Actions of Debt, as they find to be under 40 s. That they forthwith Set at Liberty and Discharge from Prison upon Common-Bail, (without payment of any Prison Fees, or other Fees whatsoever) all such Persons as are charged with such small Actions under 40 s. (other than such as are charged in Execution.) And also that such Stewards and Judges, do give such time or times for Payment of such small Debts, as they shall think fitting, where the Defendant appeareth to be poor and needy, and no ways able at one Payment, to satisfy his Creditor for the said Debt. Which Act if it be made, will fully Answer all the Ends the Promoters of the said Bill for Courts of Consciences do pretend to Aim at, (except the providing Places for those who prosecute the Bill) And that without any Arbitrary Proceedings, but according to the due and ancient Course of the Common-Law of this Kingdom.